



OGC Has Reviewed

MEMORANDUM FOR : Deputy Director/Administration

SUBJECT : Individual Claims Against the Agency

REFERENCE : My memorandum to you dated 9 November 1954,
subject as above.

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As requested in referenced memorandum, you, [redacted] and [redacted] met with me and members of my Staff a week ago yesterday to discuss some problems arising from the handling of subject claims. You will remember that I undertook to have the major points of the discussion summarized in a draft which might suggest some procedures to make easier our mutual efforts.

A draft which seeks to carry out the above is attached and I would appreciate your consideration of it and your comments. Subsequently we may both wish to expand our discussion by using an agreed draft on this subject as a basis for meeting with other senior personnel of the Agency.

Lyman B. Kirkpatrick
Inspector General

Attachments:

Orig. & 3cc of Draft

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17 NOVEMBER 1954

**SOME SUGGESTED PROCEDURES FOR ASSURING COMPLETED STAFFING
OF AGENCY PROBLEMS INVOLVING DISCRETIONARY ACTION
(BASED ON 10 NOVEMBER DISCUSSIONS BETWEEN DD/A AND IG OFFICERS)**

I DISCUSSION OF FACTS AND PRINCIPLES

1. The Agency's general administrative standards are currently sufficiently developed and sufficiently applied by responsible DD/A components (Comptroller, Audit, Medical, Security) and the Personnel Office to insure the full impact of these standards on the routine fiscal, medical, security, or personnel administrative aspects of any Agency problem.

2. However, the Agency will continuously be faced with problems in which solutions cannot be based solely on a strict application of administrative or legal standards without depriving employees of substantive benefits to which they are by right entitled. (See CFR 14.0, attached as TAB "A".)

3. An administrative component charged with applying its pertinent general standards to a specific problem normally does not have access to such facts bearing upon the problem as involve exigencies, conditions, and circumstances of the service; security considerations; or requirements to protect intelligence sources and methods. Even if such facts were known to the administrative component, they would not properly alter the administrative recommendations of that component.

4. Some facts of this type are often before the I. G., most notably as a result of complaints or investigations of apparent operational supervisory mishandling of the individual or project concerned. Often such facts are just those which suggest that an arbitrary application of the administrative standards involved would be unjust in the circumstances and that discretionary relief is required, if such relief is possible.

5. The General Counsel is the proper component to advise upon the possibility of discretionary relief in such circumstances. He can often establish that such relief would not be illegal, can sometimes establish that such relief is precedented, and can occasionally establish that such relief is mandatory.

6. The DD/A is the proper official to grant discretionary relief when he believes the total facts warrant and is advised that the possibility exists. The DCI is the final authority in cases where the DD/A considers it unwarranted or impossible to grant discretionary relief and the L. G., operating official, or employee involved contends the contrary.

7. All problems which can be resolved without recourse to the DCI should be so resolved. Any case which must go to the DCI should reach him with differences clearly stated.

8. Each case inevitably presents some variation from all other cases, often making it necessary in granting specific discretionary relief to depart from administrative standards of general applicability.

9. Confidential Funds may not be used as a substitute for any step in arriving at the determinations described above and may only be used in any event when the factors of security or operations peculiar to this Agency fully support such expenditure and preclude the use of Vouchered Funds.

10. The use of the concepts "proprietary", "subsidy", and "cover facility" does not, as these terms are presently loosely defined, serve as a substitute for considering problems involving discretionary action on their merits. (OGC will recommend definitions of these terms and establish what effects must result from their use.)

II PROCEDURES

1. In order to place before the DD/A all facts bearing upon a problem:

at the time the DD/A must determine action, the I. G. shall provide the DD/A with such facts known to the I. G. as are relevant to the determination and as are supplementary to facts ascertained by administrative actions. (This I. G. activity should be considered as part of the "adequate administrative machinery established by the DCI to consider any special requirements which have not been or should not be covered by continuing regulations", Para. 7b(5) of [redacted] September 1953, and should supplement such existing machinery as that established by Para. [redacted] 5 February 1954 ("Resolution of Questions) and by Para. [redacted] February 1954 (Special Authorizations - General Expenditure") attached as TAB "B".

2. The General Counsel shall advise as to the legality of proposed discretionary relief, based upon a review of all the facts available.

3. When an affected employee, or the I. G. refuses to accept a DD/A determination denying discretionary relief, the question shall be referred to the DCI through the I. G. for determination of final action.

4. A report on every case involving a granting or denial of discretionary relief by the DD/A or DCI shall be prepared by the I. G. for cases in which he has been involved and by the DD/A for all other cases. In cases where discretionary relief is granted, the report shall be made available to the administrative component primarily involved in order to minimize misunderstanding as to the desired application of general administrative standards. In cases where discretionary relief is denied, the report shall be made available to the supervisor involved in order to promote understanding of administrative requirements.

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